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9 August 1988

OCA 2658-88

MEMORANDUM FOR: Inspector General
General Counsel
Chief, Administrative Law Division/OGC

FROM: [redacted] Legislation Division
Office of Congressional Affairs

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SUBJECT: Inspector General Reporting Provisions in
Senate Intelligence Authorization Bill,
S. 2366/H.R. 4387

1. Attached for your information is a copy of section 504 of the Senate version of the intelligence authorization bill pertaining to reports concerning Inspector General activities. This provision is not contained in the House version of the bill. However, it is likely that it will survive the conference.

2. If you have any questions, please telephone me on secure

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Attachment

OCA/LEG/ [redacted] (9 August 1988)

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The committee is also concerned by the performance of U.S. counterintelligence and the lack of proper security practices. In that connection, for example, the committee is completing a review of the Marine security guard espionage case. At the same time, disclosures about the FBI's CISPES investigation raised serious questions about activities authorized in 1983-86 under the Attorney General's guidelines for counterintelligence investigations of international terrorism. The results of the committee's formal investigation of the CISPES matter will be reported later this year.

The committee recognizes the need for vigilant oversight to ensure that U.S. counterintelligence operations respect the rights of the American people. For that reason, the committee questioned FBI Director Sessions at the annual counterintelligence budget hearing about the "Library Awareness Program," and new guidelines for the program are under discussion with the FBI Intelligence Division.

Mr. President, at this time I would like to express my appreciation for the cooperation of the distinguished members of the Senate Armed Services Committee, especially the chairman, Senator Nunn of Georgia, and the ranking member, Senator Warner of Virginia. They are also valued members of the Intelligence Committee. With their acknowledged expertise in military matters, combined with their keen awareness of the national security issues of the day, they make an immense contribution to our work.

I also wish to thank Senator Exon and Senator Thurmond, the chairman and ranking member of the Armed Services Subcommittee on Strategic Forces. They have the primary responsibility in the Armed Services Committee for review of those national intelligence programs that fall under the shared jurisdiction of our two committees. Their careful and diligent review of our intelligence programs have been instrumental in assuring the strong bipartisan support of these vital activities.

Mr. COHEN. Mr. President, I am pleased to join the distinguished chairman of the committee, Senator Boren, in presenting the Intelligence authorization for fiscal year 1989 to the Senate. Perhaps the most potent oversight tool available to the Congress in monitoring the activities of the U.S. Intelligence Community is the power of the purse. The legislation before the Senate today reflects the Intelligence Committee's best judgment as to how the limited resources at our disposal can best be applied against the ever-expanding national intelligence requirements.

The recent ratification of the INF Treaty by the Senate, the prospect of a START Agreement in the near

future, and the growing threat of international terrorism, the proliferation of nuclear technology, and the assessment of global economic stability. Last, we cannot ignore the potentially devastating consequences of the international drug trade. All of these areas require significant contributions from intelligence and, if ignored, may pose serious threats to all civilized societies.

Intelligence requirements are voluminous and complex, and are expensive to satisfy. In these times of shrinking defense and intelligence budgets, it is critical for the oversight committees to have a thorough and comprehensive understanding of the nature of these requirements, both in the short run as well as for the future. We must also ensure that those requirements with high priority for the Nation's security receive commensurate priority in terms of funding. This budget, in particular, reflects this sort of balancing by the committee. Several of the actions embodied in the classified annex to this bill will have significant implications for our national security well into the 21st century.

Last year, when we considered this bill, I pointed out the efforts being undertaken by the committee to improve its oversight of intelligence activities. I am pleased to say this year that those efforts have, indeed, moved forward since that time. For example, the independent audit staff we discussed last year has been put in place and is functioning. It is already demonstrating that it will be an important complement to our other oversight mechanisms.

In this year's bill, we have also included provisions requiring the Director of Central Intelligence to make available to the intelligence committees certain reports concerning the inspector general at CIA. Not only will this provide the committees better awareness of the inspector general's activities, it should go a long way in preserving his independence and effectiveness at CIA. These provisions, I might add, grew out of hearings held by the committee on a bill introduced by Senator SPECTER, who has made a particularly valuable contribution in this regard.

I would also note, Mr. President, the progress we have made over the past year in strengthening the legal framework for intelligence oversight. You will recall that the Intelligence Oversight Act of 1988 passed the Senate on March 15 by a vote of 71 to 19, indicative of the strong bipartisan support which this legislation received. A companion bill has been reported by the

House in the past few months. I am sure that the House will pass legislation that is the requirement that notice of covert actions be provided at least to the four congressional leaders no later than 48 hours after a finding authorizing such activities is approved by the President. The administration has indicated that it plans to veto the legislation because of its objections to this provision.

The administration, in fact, takes the position that the requirement under existing law that the President provide notice of such activities to Congress "in a timely fashion," in order to be consistent with his responsibilities under the Constitution, can only be interpreted as leaving him with "unfettered discretion" to determine when Congress is advised. Justice Department officials have conceded to the Intelligence Committee that this could mean weeks, months, or even years.

Moreover, the President has issued a National Security Decision Directive—NSDD 286—which has expressly reserved the right to withhold notice "in exceptional cases" for an indefinite period.

In a sense, Mr. President, Congress finds itself in a worse position after the Iran-Contra affair, than we thought we were in before it. We thought there was a clear understanding between the legislative and executive branches that notice "in a timely fashion" meant within a few days. Indeed, the practice of the administration before the Iran arms sales finding had been to provide prior notice. This also has been the practice since, except that now we are confronted with assertions that we have not had before of Executive power to keep Congress in the dark if a President so chooses.

I for one do not think Congress can accept these propositions. Covert actions involve shared governmental powers. They are not the exclusive province of the President. Congress must appropriate the money for them, and it has a need to learn of them in order to carry out its other legislative functions under the Constitution.

I appreciate the fact that such activities may take many forms, some requiring more delicate handling than others. We have attempted to build such flexibility into the bill by providing various options in terms of who must be notified. But I cannot accept the assertion that, under current law, the President has the right to keep Congress in the dark altogether. After all, ours is a system of checks and balances, not a monarchy. There is too much at stake for our country where covert actions are concerned for Congress to be denied a role. As Clark Clifford told the committee last December:

SEC. 301. There is authorized to be appropriated for the Intelligence Community Staff for fiscal year 1989 the sum of \$23,745,000.

AUTHORIZATION OF PERSONNEL AND STRENGTH

Sec. 302. (a) The Intelligence Community Staff is authorized 344 full-time personnel as of September 30, 1989. Such personnel of the Intelligence Community Staff may be permanent employees of the Intelligence Community Staff or personnel detailed from other elements of the United States Government.

(b) During fiscal year 1989, personnel of the Intelligence Community Staff shall be selected so as to provide appropriate representation from elements of the United States Government engaged in intelligence activities.

(c) During fiscal year 1989, any officer or employee of the United States or a member of the Armed Forces who is detailed to the Intelligence Community Staff from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a non-reimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

INTELLIGENCE COMMUNITY STAFF ADMINISTERED IN SAME MANNER AS CENTRAL INTELLIGENCE AGENCY

Sec. 303. During fiscal year 1989, activities and personnel of the Intelligence Community Staff shall be subject to the provisions of the National Security Act of 1947 (50 U.S.C. 301 et seq.) and the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) in the same manner as activities and personnel of the Central Intelligence Agency.

TITLE III—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM

AUTHORIZATION OF APPROPRIATIONS

Sec. 301. There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 1989 the sum of \$144,500,000.

TITLE IV—GENERAL PROVISIONS

AUTHORITY FOR CONDUCT OF INTELLIGENCE ACTIVITIES

Sec. 401. The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or laws of the United States.

INCREASES IN EMPLOYEE BENEFITS AUTHORIZED BY LAW

Sec. 402. Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such benefits authorized by law.

TITLE V—CENTRAL INTELLIGENCE AGENCY ADMINISTRATIVE PROVISIONS

ONE-TIME PERSONNEL AUTHORITY

Sec. 501. (a) Whenever the Director of Central Intelligence finds during fiscal year 1989 that a former employee of the Central Intelligence Agency has unfairly had his career with the Agency adversely affected as a result of allegations concerning the loyalty to the United States of such former employee, the Director may grant such former employee such monetary or other relief (in-

cluding the payment of back pay) as he deems appropriate. Any such relief shall be paid from the unexpended balance of the Special Fund for the Central Intelligence Agency. The amount of such relief shall not be available in any other manner or in any other fund.

(b) The authority of the Director to make payments under subsection (a) is effective only to the extent that appropriated funds are available for that purpose.

(d) The Director shall report to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives any use of the authority granted by this section in advance of such use.

PER-CENTRAL SPECIAL ELECTION AUTHORITY

Sec. 302. (a) Subsection (d) of section 301 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended, is redesignated as subsection (c); and

(b) A new subsection (d) is added after subsection (c) as follows:

"(d) An employee who has been designated as a participant in the Central Intelligence Agency Retirement System after December 31, 1967, pursuant to section 303 of this Act, may elect to become subject to chapter 84 of title 5, United States Code. An election under this paragraph—

"(1) shall not be effective unless it is made during the six-month period after the enactment of this section, or during the six-month period beginning on the date on which the employee is so designated, whichever comes first;

"(2) shall take effect beginning with the first pay period beginning after the date of the election; and

"(3) shall be irrevocable."

AUTHORITY TO COMPENSATE RETIRED MILITARY PERSONNEL SERVING ON DCI ADVISORY COMMITTEES

Sec. 503. Subsection (a) of section 303 of the National Security Act of 1947 (50 U.S.C. 405) is amended by adding at the beginning of the last sentence "Retired members of the uniformed services employed by the Director of Central Intelligence who hold no other office or position under the United States for which they receive compensation," and by changing the word "immediately thereafter from "Other" to "other."

REPORTS CONCERNING INSPECTOR GENERAL ACTIVITIES

Sec. 504. The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.) is amended by adding after section 16 the following new section:

"REPORTS OF INSPECTOR GENERAL ACTIVITIES

"Sec. 17. The Director of Central Intelligence shall furnish to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives the following reports relating to the activities of the Inspector General at the Central Intelligence Agency:

"(a) A report made at the time any Inspector General is selected by the Director of Central Intelligence, specifying the name of the person selected, and certifying that such selection was made without regard to political affiliation. Such report shall also include a certification that the person selected meets Central Intelligence Agency security requirements and has had prior senior experience in the foreign intelligence field. It should also describe the background of such person as it relates to his or her experience in accounting, law, financial analysis, management analysis, public administration, other field directly relevant to the performance of functions assigned the Inspector General.

"(b) A report of any decision made by the Director of Central Intelligence to prohibit the Inspector General from initiating, carrying out, or completing any audit, inspection, or investigation within the Central Intelligence Agency, to be made within seven days of such decision.

"(c) A report of any other decision made by the Director of Central Intelligence which would substantially affect the ability of the Inspector General to carry out his duties and responsibilities. Such report shall include the position of the Inspector General with respect to such decision, and be transmitted within seven days to the committee."

TITLE VI—FBI ENHANCED COUNTER-INTELLIGENCE AUTHORITIES

DEMONSTRATION PROJECT ON MOBILITY AND RELOCATION FOR THE NEW YORK FIELD DIVISION

Sec. 601. (a) Notwithstanding any other provision of law, the Director of the Federal Bureau of Investigation and the Director of the Office of Personnel Management shall conduct a demonstration project to ascertain the effects on the recruitment and retention of personnel, and on field operations in the New York Field Division of the Federal Bureau of Investigation of providing—

(1) lump-sum payments to personnel upon directed assignment to the New York Field Division from another geographical location, and who enter into an agreement to complete a specified minimum period of service, not to exceed three years, in the New York Field Division; and

(2) periodic payments to New York Field Division employees who are subject by policy and practice to directed geographical transfer or assignment.

(b) Such demonstration project shall commence no later than ninety days after the date of enactment of this Act and shall terminate five years after such date, unless extended by law.

(c) The Director of the Federal Bureau of Investigation and the Director of the Office of Personnel Management shall jointly provide to the President and the Congress annual interim reports and, at the conclusion of the five-year period, a final evaluation concerning the results of the demonstration project.

TITLE VII—DEPARTMENT OF DEFENSE INTELLIGENCE PROVISIONS

Sec. 701. (a) Section 421 of title 10, United States Code, is amended to read as follows:

"§ 421. Funds for foreign cryptologic support

"(a) The Secretary of Defense may use appropriated funds available to the Department of Defense for intelligence and communications purposes to pay for the ex-